

Introduced by Senator ScottFebruary 16, 2006

An act to amend Sections 7630 and 8815 of the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 1325, as introduced, Scott. Adoption.

~~Under existing law, a man is presumed to be the father of a child if certain conditions are met. Existing law provides that if a mother relinquishes for or consents to the adoption of a child who has a presumed father, the father must be given notice of the adoption proceeding and a child may not be adopted without his consent, except under specified circumstances. If the father has not denied paternity or relinquished for or consented to the adoption, the mother or a prospective adoptive parent must file a petition to terminate the parental rights of the father.~~

~~Existing law permits a child, the child's mother, a licensed adoption agency, a prospective adoptive parent or, with certain exceptions, a presumed father or other interested party to bring an action to determine the existence or nonexistence of a parent and child relationship between the presumed father and child.~~

~~Under existing law, if a proceeding to terminate the parental rights of a presumed father has been filed, an action to determine the parent and child relationship between the presumed father and child is required to be consolidated with the termination proceeding.~~

~~This bill would require an action to determine the existence or nonexistence of a parent and child relationship between a presumed father and child to be consolidated with a proceeding that has been filed for the emancipation of the child.~~

Under existing law, if a birth parent rescinds consent to an adoption within a time specified and requests return of the child, the child is immediately returned to the birth parent.

This bill would require the court, if a birth parent rescinds consent to an adoption and before the child is returned to the birth parent, to make a finding that the return of the child to the birth parent serves the best interests of the child.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7630 of the Family Code is amended to
2 read:

3 7630. (a) A child, the child's natural mother, a man
4 presumed to be the child's father under subdivision (a), (b), or (c)
5 of Section 7611, an adoption agency to whom the child has been
6 relinquished or a prospective adoptive parent of the child, may
7 bring an action as follows:

8 (1) At any time for the purpose of declaring the existence of
9 the father and child relationship presumed under subdivision (a),
10 (b), or (c) of Section 7611.

11 (2) For the purpose of declaring the nonexistence of the father
12 and child relationship presumed under subdivision (a), (b), or (c)
13 of Section 7611 only if the action is brought within a reasonable
14 time after obtaining knowledge of relevant facts. After the
15 presumption has been rebutted, paternity of the child by another
16 man may be determined in the same action, if he has been made
17 a party.

18 (b) Any interested party may bring an action at any time for
19 the purpose of determining the existence or nonexistence of the
20 father and child relationship presumed under subdivision (d) or
21 (f) of Section 7611.

22 (c) An action to determine the existence of the father and child
23 relationship with respect to a child who has no presumed father
24 under Section 7611 or whose presumed father is deceased may
25 be brought by the child or personal representative of the child,
26 the Department of Child Support Services, the mother or the
27 personal representative or a parent of the mother if the mother
28 has died or is a minor, a man alleged or alleging himself to be the

1 father, or the personal representative or a parent of the alleged
2 father if the alleged father has died or is a minor.

3 ~~(d) An action under subdivision (c) shall be consolidated with~~
4 ~~a proceeding pursuant to Section 7662 whenever a proceeding~~
5 ~~has been filed under Chapter 5 (commencing with Section 7660):~~
6 ~~The parental rights of the alleged natural father shall be~~
7 ~~determined as set forth in Section 7664. The consolidated action~~
8 ~~shall be heard in the court in which the Section 7662 proceeding~~
9 ~~is filed, unless the court in which the action under subdivision (c)~~
10 ~~is filed finds, by clear and convincing evidence, that transferring~~
11 ~~the action to the other court poses a substantial hardship to the~~
12 ~~petitioner. Mere inconvenience does not constitute a sufficient~~
13 ~~basis for a finding of substantial hardship. If the court determines~~
14 ~~there is a substantial hardship, the consolidated action shall be~~
15 ~~heard in the court in which the paternity action is filed.~~

16 *(d) (1) If a proceeding has been filed under Chapter 2*
17 *(commencing with Section 7820) of Part 4, an action under*
18 *subdivision (a) or (b) shall be consolidated with the proceeding.*
19 *The parental rights of the presumed father shall be determined as*
20 *set forth in Sections 7820 through 7829, inclusive.*

21 *(2) If a proceeding pursuant to Section 7662 has been filed*
22 *under Chapter 5 (commencing with Section 7660), an action*
23 *under subdivision (c) shall be consolidated with the proceeding.*
24 *The parental rights of the alleged natural father shall be*
25 *determined as set forth in Section 7664.*

26 *(3) The consolidated action under paragraphs (1) or (2) shall*
27 *be heard in the court in which the proceeding is filed, unless the*
28 *court finds, by clear and convincing evidence, that transferring*
29 *the action to the other court poses a substantial hardship to the*
30 *petitioner. Mere inconvenience does not constitute a sufficient*
31 *basis for a finding of substantial hardship. If the court*
32 *determines there is a substantial hardship, the consolidated*
33 *action shall be heard in the court in which the paternity action is*
34 *filed.*

35 SEC. 2. Section 8815 of the Family Code is amended to read:

36 8815. (a) Once the revocable consent to adoption has become
37 permanent as provided in Section 8814.5, the consent to the
38 adoption by the prospective adoptive parents may not be
39 withdrawn.

1 (b) Before the time when the revocable consent becomes
2 permanent as provided in Section 8814.5, the birth parent or
3 parents may request return of the child. In such a case the ~~child~~
4 ~~shall immediately be returned to the birth parent or parents so~~
5 ~~requesting~~ *court shall order the child restored to the care and*
6 *custody of the birth parent or parents subject to the provisions of*
7 *Section 3041.*

8 (c) If the person or persons with whom the child has been
9 placed have concerns that the birth parent or parents requesting
10 return of the child are unfit or present a danger of harm to the
11 child, that person's or those persons' only option is to report their
12 concerns to the investigating adoption agency and the appropriate
13 child welfare agency. These concerns shall not be a basis for
14 failure to immediately return the child.

15 ~~(d) This section shall become operative on January 1, 1995.~~